

Branigan, Terence

From: Kelln, H. Max <H.Max.Kelln@faegrebd.com>
Sent: Friday, November 18, 2016 1:26 PM
To: Branigan, Terence; Beth Admire
Subject: RE: Jeffersonville FCA Update and Request for Modification
Attachments: 2016-07-28 - Jeffersonville Pre-Public Notice Draft Permit Comment Lette.pdf; 2016-08-31 - Draft Permit Comment Letter from L. Ashack to L. Voss.pdf

Terry –

I would refer you to the public comments submitted by the City of Jeffersonville for its recently issued draft permit. Indiana rules provide permittees administrative rights for newly issued permits, including the right to appeal or request a variance. Any available options under Indiana rules would have to be considered to the extent that the issues identified in the comment letters were not resolved when the final permit is issued.

Max

H. Max Kelln

Associate

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Faegre Baker Daniels LLP

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From: Branigan, Terence [mailto:Branigan.Terence@epa.gov]
Sent: Friday, November 18, 2016 11:33 AM
To: Kelln, H. Max; Beth Admire
Subject: RE: Jeffersonville FCA Update and Request for Modification

Max-

Would you please clarify the status of Faegre Baker Daniel's representation of the City of Jeffersonville with respect to the request referenced above and discussed below?

Thanks,

Terry

Terence Branigan
Associate Regional Counsel (C-14J)
U.S. EPA/Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604
(312) 353-4737 phone
(312) 385-5500 fax
branigan.terence@epa.gov

From: Kelln, H. Max [<mailto:H.Max.Kelln@faegrebd.com>]
Sent: Wednesday, November 16, 2016 6:55 AM
To: Branigan, Terence <Branigan.Terence@epa.gov>; Beth Admire <badmire@idem.IN.gov>
Subject: RE: Jeffersonville FCA Update and Request for Modification

Terry and Beth – Any update on follow-up questions/comments on the request yet? Thanks! Max

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From: Branigan, Terence [<mailto:Branigan.Terence@epa.gov>]
Sent: Friday, October 28, 2016 4:17 PM
To: Kelln, H. Max; ADMIRE, BETH
Subject: RE: Jeffersonville FCA Update and Request for Modification

Hi Max-

We've had some preliminary discussions about the modification request and are preparing correspondence seeking some additional information. The consensus here is that we'd like a chance to review the additional information prior to setting up a meeting to discuss the request. I am hopeful that the correspondence will be ready to send in the very near future.

Could you explain in more detail what is meant by saying that the city will have to act to preserve its rights regarding the new permit?

Thanks,

Terry

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From: Kelln, H. Max [<mailto:H.Max.Kelln@faegrebd.com>]
Sent: Thursday, October 27, 2016 12:54 PM
To: Branigan, Terence <Branigan.Terence@epa.gov>; ADMIRE, BETH <BADMIRE@idem.IN.gov>
Subject: RE: Jeffersonville FCA Update and Request for Modification

Hi Terry –

Just checking in to see if the agencies are at a point yet where we can set up a meeting to discuss. The City of Jeffersonville's NPDES permit is nearing finalization, which will include a new phosphorus limit. So the city will have to act to preserve its rights regarding the new permit if a determination hasn't been made yet on the modification request.

Thanks!

Max

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From: Branigan, Terence [<mailto:Branigan.Terence@epa.gov>]

Sent: Thursday, October 13, 2016 3:17 PM

To: Kelln, H. Max; ADMIRE, BETH

Subject: RE: Jeffersonville FCA Update and Request for Modification

Hi Max:

November 8 and 9 won't work for EPA. We're having a conference call on Monday and should have a better idea afterward about what arrangements would work from this end.

Regards,

Terry

Terence Branigan

Associate Regional Counsel (C-14J)

U.S. EPA/Region 5

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From: Kelln, H. Max [<mailto:H.Max.Kelln@faegrebd.com>]

Sent: Thursday, October 13, 2016 12:51 PM

To: ADMIRE, BETH <BADMIRE@idem.IN.gov>; Branigan, Terence <Branigan.Terence@epa.gov>

Subject: RE: Jeffersonville FCA Update and Request for Modification

Thanks Beth –

It looks like the week of the 24th doesn't work for us. We are available the first full week in November on the following dates:

- Tuesday, November 8; and
- Wednesday, November 9

Also, we want to propose having a call in advance if there are any questions/specifics you want us to address at the meeting. October 21 would work for the conference call.

Let us know if this works or is there any other dates that you are available after November 11.

Regards,

Max

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From: ADMIRE, BETH [<mailto:BADMIRE@idem.IN.gov>]
Sent: Friday, October 07, 2016 10:11 AM
To: Kelln, H. Max; Branigan.Terence@epa.gov
Subject: RE: Jeffersonville FCA Update and Request for Modification

The week of the 24th would work better for me.

From: Kelln, H. Max [<mailto:H.Max.Kelln@faegrebd.com>]
Sent: Friday, October 07, 2016 10:09 AM
To: ADMIRE, BETH; Branigan.Terence@epa.gov
Subject: RE: Jeffersonville FCA Update and Request for Modification

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Thanks. Would Friday, October 21 work? Again, our preference would be to meet in Jeffersonville so we can get as much local participation (sewer board, etc.) as possible. Also, I really think Jeffersonville wants an opportunity to show other progress that has been made with the system. We can provide a fuller agenda in advance. Regards, Max

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From: ADMIRE, BETH [<mailto:BADMIRE@idem.IN.gov>]
Sent: Monday, September 26, 2016 11:07 AM
To: Kelln, H. Max; Branigan.Terence@epa.gov
Subject: RE: Jeffersonville FCA Update and Request for Modification

Hi Max:

We have an internal meeting schedule in this matter on October 17th, so I would prefer that we meet after that.

From: Kelln, H. Max [mailto:H.Max.Kelln@faegrebd.com]
Sent: Monday, September 26, 2016 10:06 AM
To: Branigan.Terence@epa.gov; ADMIRE, BETH
Subject: Jeffersonville FCA Update and Request for Modification

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Terry and Beth –

I think by now each of you should have received Jeffersonville's FCA Update and Request for Modification. In terms of next steps, we would like to propose an in-person meeting for Jeffersonville to present the key points of its revised FCA, discuss our modification request, and answer any preliminary questions. For further reference, please see attached public comments that were submitted by Jeffersonville to IDEM as part of its recent draft permit renewal.

For the meeting, we'd propose either Tuesday, October 11, or Wednesday, October 12 as the best dates for us. Present would be Diana Hamilton (Sycamore Advisers), Chris Ranck (Arcadis), myself, Len Ashack (sewer director), and perhaps a couple members of the sewer board. Our initial preference would be to have the meeting in Jeffersonville.

Please let us know if these don't work (or feel free to propose your own) and preferred location. Please let us know if you would like to have a preliminary conference call before then as well.

Regards,

Max

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WASTEWATER DEPARTMENT

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phone 812 - 285 - 6451

UTILITY BILLING OFFICE

500 Quartermaster Court
Room 104
Jeffersonville, Indiana 47130

phone 812 - 285 - 6418

July 28, 2016

VIA E-MAIL

Mr. Jerry Dittmer, Chief
Municipal Permits Section
Indiana Department of Environmental Management
Office of Water Quality Mail Code 65-42
100 N. Senate Ave.
Indianapolis, Indiana 46204-2251

***RE: COMMENTS TO PRE-DRAFT PUBLIC NOTICE
JEFFERSONVILLE NPDES PERMIT RENEWAL
PERMIT NO. IN0023302***

Dear Mr. Dittmer:

Please find enclosed the City of Jeffersonville's comments to the Pre-Public Notice Draft of NPDES Permit IN0023302 for its downtown wastewater treatment plant. As you know, the biggest change to this permit is the new 1.0 milligram per liter (mg/L) total phosphorus limit. Given the ongoing requirements of our Long Term Control Plan (LTCP), the City of Jeffersonville has limited means to fund the capital upgrades needed to meet the limit's three-year implementation schedule. We are in the process of completing our Financial Capability Assessment (FCA) update, which preliminary results show that that these projects are less affordable than when the city completed its last FCA five years ago. As a result, Jeffersonville will need to either modify its LTCP or have more than three years to comply with its new phosphorus limit. It's also possible that because of Jeffersonville's extreme financial difficulties, we will still need longer to meet the permit's new limit regardless of whether it gets an LTCP schedule extension.

Despite tripling its sewer rates, the LTCP projects have burdened Jeffersonville with significant debt. Since 2011, the estimated cost of the City of Jeffersonville's LTCP and collection system projects have increased to over \$200,000,000, a large portion of which still remains unfunded. Jeffersonville has tried to keep up by raising its rates, which are now among the highest in Indiana. Despite these efforts, Jeffersonville does not have anywhere near the available bonding capacity to complete remaining LTCP projects and the phosphorus capital projects within the required periods.

The cost of the remaining LTCP and treatment plant upgrades for phosphorus far exceeds Jeffersonville's bonding capacity. Jeffersonville has \$44.6 million in remaining LTCP capital projects that are currently unfunded. The cost of the phosphorus treatment upgrades are estimated to cost over \$11 million for Jeffersonville's downtown plant alone. Yet, Jeffersonville may have

as little as \$5.5 million in available bonding capacity until its previous debt can be paid off beginning in 2032. The Indiana Finance Authority has also indicated that it will cap subsidized SRF loans at \$10 million, which will likely raised Jeffersonville's borrowing costs.

As noted above, preliminary results from Jeffersonville's FCA update shows that the cost of its LTCP and other sewer program requirements places an even higher burden on Jeffersonville's ratepayers than anticipated when it entered into its consent decree in 2009. Unless Jeffersonville is granted relief, these increased sewer program costs will increase the burden on residents based on Jeffersonville's median household income on a per capita basis compared to the burden contained in the approved LTCP. Put simply, Jeffersonville is in a weaker financial position and cannot complete these projects within the required deadlines without causing significant and widespread negative social and economic impacts.

We look forward to working with IDEM on reasonable compliance schedules that are financially feasible and protective of the environment. All rights regarding this Pre-Draft Public Notice Permit are reserved.

Sincerely,

CITY OF JEFFERSONVILLE



Len Ashack
Director

Attachment – Technical Comments

Cc: Jeffersonville Sanitary Sewer Board
NPDES Permit Files

TECHNICAL COMMENTS**Page 1**

The City changed the name of the street on which the Downtown WWTP is located. It is now 1420 Bates Bowyer Ave. and no longer Pennsylvania Ave.

Page 3 of 46 Table 2 under Monitoring Requirements the Daily Dissolved Oxygen.

The current permit requires that *"the daily minimum concentration of dissolved oxygen in the effluent shall be reported as the lowest result of the daily continuous monitoring of dissolved oxygen."* Although the City requested this change during the last permit renewal, we request that the language be changed back to reporting based on DO readings be taken once every three (3) hours or 8 times daily and averaged for the 24 hour period.

The reason for this change is that if there is a problem with the DO probe, the reading will show up as low as 0.0 mg/L even though there is adequate DO in the effluent to meet the 6.0 mg/L daily minimum. SCADA readings will be taken every three hours and averaged for the 24-hr period. If there is an issue with the DO probe our SCADA will send out an alarm that will alert staff to check the SCADA system and the DO probe.

Part III – Requirement to Operate a Pretreatment Program

The City does not have any specific comments on this requirement although the City wants to make your office aware that this is the same requirement as is in the current permit. The City did a local limits study in the Spring 2015, which was submitted to and approved by USEPA in a letter dated July 17, 2015. Based on the approval of the local limits, the City has drafted a revised Sewer Use and Pretreatment Ordinance and it was submitted to U.S. EPA – Region V in both electronic and hard copy on November 12, 2015. Region V has neither commented on nor approved the revised Ordinance. Unless there is a new pretreatment facility locating in Jeffersonville which has a potential to discharge pollutants not contained in the Revised or existing Sewer Use Ordinance, the City through the Wastewater Department will wait to get comments or approval from Region V on the Revised Ordinance. Meanwhile, we believe that the existing Ordinance is protective of the WWTP and waters of the State.

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August 31, 2016

VIA E-MAIL

Ms. Leigh Voss, Chief
Municipal Permits Section
Indiana Department of Environmental Management
Office of Water Quality Mail Code 65-42
100 North Senate Avenue
Indianapolis, Indiana 46204-2251

***RE: PUBLIC COMMENTS TO DRAFT
JEFFERSONVILLE NPDES PERMIT RENEWAL
PERMIT NO. IN0023302***

Dear Ms. Voss:

The following are the City of Jeffersonville's public comments to the draft NPDES Permit IN0023302 for its downtown wastewater treatment plant. In particular, the City of Jeffersonville wishes to comment on the following new requirement provided in Part I, Section A.1 of the Draft NPDES Permit:

TABLE 1

<u>Parameter</u>	<u>Quality or Loading</u>			<u>Quality or Concentration</u>			<u>Monitoring Requirements</u>	<u>Sample Type</u>
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Units</u>	<u>Measurement Frequently</u>	
Phosphorus Interim [4]	----	----	----	Report	----	mg/l	Daily	24-Hr. Composite
Final [4]	----	----	----	1.0	----	mg/l	Daily	24-Hr. Composite

[4] Refer to the Schedule of Compliance for phosphorus in Part I.D. of this permit.

Pursuant to Part I.D.5 of the Draft NPDES Permit, Jeffersonville must comply with this deadline within thirty-six (36) months following its effective date.

However, the City of Jeffersonville is under a consent decree to complete its Long Term Control Plan (LTCP) to control combined sewer overflows (CSOs) by June 2025. The bulk of these LTCP projects are scheduled during the phosphorus compliance period. Unless Jeffersonville's LTCP is modified, the capital upgrades needed to comply with the phosphorus limit will cause undue hardship or burden.

I. Jeffersonville's LTCP Has Pushed Its Finances To The Limit

Jeffersonville is in the process of updating its Financial Capability Assessment (FCA), as required by Indiana Code 13-18-3-2.4. Preliminary results of this assessment show that Jeffersonville remains a "high burden" community with respect to the affordability of its LTCP. In fact, its financial condition has worsened significantly since it was submitted. Most importantly, the costs of its overall sewer program have increased to over 3.9% of Jeffersonville's annual median household income. Meanwhile, the so-called "circuit breaker" has caused Jeffersonville's property tax collection rate to go from "strong" to "weak."

The cost of Jeffersonville's LTCP has increased significantly since it was submitted in 2010. At the time, Jeffersonville's LTCP had an estimated cost of \$90-120 million. Although Jeffersonville has completed two out of the three phases of its LTCP, the estimated costs of the final phase have increased by over \$14 million to \$44,000,000. These projects have not yet been funded.

Jeffersonville's overall sewer needs have also increased because of higher O&M costs and the development of a formal repair and replacement schedule. At the time its LTCP was approved, Jeffersonville forecasted approximately \$143 million in total sewer costs, which only included the stormwater conveyance system and LTCP projects. Since then, the scope of the projects and cost estimates has ballooned to over \$195 million, with over \$110 million for projects yet to be completed. These needs have put a huge financial strain on the City of Jeffersonville.

Because of these significant demands, Jeffersonville has already incurred \$94.8 million in outstanding sewer debt to fund the second phase of its LTCP, which will heavily burden the city through at least 2030. In total, Jeffersonville's debt per capita is \$4,371. This is extremely high for a blue collar community like Jeffersonville. To keep up, the city has tripled rates since 2011. In 2015, Jeffersonville's rate for residential customers was \$67.27, which is significantly higher than the average and in the range that Indiana SRF considers eligible for principal forgiveness for its loan programs. The rate increases needed to pay for the remaining projects would put Jeffersonville among the highest in the country.

II. Jeffersonville Cannot Afford the Upgrades to Comply with the Phosphorus Limit

The costs to meet the phosphorus limits are expected to be significant. The 1.0 milligram per liter (mg/l) total phosphorus monthly average effluent limit in the draft permit will require Jeffersonville's downtown plant to reduce phosphorus levels by 90%. It is estimated that the necessary upgrades to achieve these levels will cost \$11,494,000, none of which has been funded. It will also add approximately \$1,150,000 in annual O&M expenses. The permit for Jeffersonville's north wastewater treatment plant must be renewed in 2018, which will require that Jeffersonville spend another \$5,000,000 in capital upgrades and add \$500,000 in O&M expenses.

Because of its LTCP requirements, Jeffersonville does not currently have the ability to finance the phosphorus upgrades (which weren't anticipated when the city developed its LTCP). Despite the significant amount of unfunded Phase III projects left, Jeffersonville may have as little as \$6.5 million in available bonding capacity. Jeffersonville will be faced with this financing

crunch until previous debt can be paid off beginning in 2032. In short, Jeffersonville cannot afford both its remaining LTCP projects and the required phosphorus upgrades.

III. IDEM Has The Authority to Waive The Phosphorus Requirement

IDEM established the 1.0 mg/l phosphorus limit through a Non-Rule Policy Document (NPD); and, therefore, can waive the requirement without going through the formal variance process. Unlike effluent limits that are set under 327 IAC 2, IDEM set the new phosphorus limit through a policy that did not go through formal rulemaking. IDEM can therefore postpone application of this limit to Jeffersonville and reweigh the costs and benefits during Jeffersonville's next permit renewal.

Indiana regulation 327 IAC 5-10-2(a)(2) allows IDEM to determine that "phosphorus reduction is needed to protect downstream water uses or to insure that water quality standards applicable to the affected waters of the state are met." However, the determination need not apply to all sources; IDEM can determine on an individual basis that such limits are not needed. First, upriver agricultural activities are likely to be much larger phosphorus contributors than the downtown plant. Second, any impacts from Mill Creek are likely to have de minimis impact on the Ohio River. Particularly given the large capital investment needed to comply with its LTCP, incorporation of the phosphorus limit into this NPDES permit will cause Jeffersonville undue hardship and burden.

Based on the above, the City of Jeffersonville requests that the phosphorus limit be removed from its NPDES permit unless its LTCP can be modified to allow these short-term upgrades. Other public comments for the Draft NPDES Permit are provided in Appendix A.

We look forward to working with IDEM on reasonable compliance schedules that are financially feasible and protective of the environment. All rights regarding this Draft Public Notice Permit are reserved.

Sincerely,
CITY OF JEFFERSONVILLE

Len Ashack
Director

Attachment – Exhibit A

cc: Paul Higginbotham – Assistant Commissioner, Office of Water Quality, IDEM
Jeffersonville Sanitary Sewer Board
NPDES Permit Files

Exhibit A

Technical Comments

Page 3 – Table 2 Footnote [6]

The DWWTP has continuous dissolved oxygen measurement which is recorded in the SCADA system. In order to effectively use the effluent DO monitoring system in place, we ask that the above wording be changed to read as follows:

[6] The daily minimum concentration of dissolved oxygen in the effluent shall be reported as the arithmetic mean of the lowest dissolved oxygen reading taken at three (3) hour intervals and determined by summation of the eight (8) daily DO readings divided by the number of daily readings. The dissolved oxygen readings are to be collected and recorded every three (3) hours.